

HOUSE BILL NO. 725

INTRODUCED BY R. MAEDJE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING CONSERVATION EASEMENTS AND DEED RESTRICTIONS THAT ARE EQUIVALENT TO CONSERVATION EASEMENTS; DEFINING "ENCUMBRANCE BROKER" AND REQUIRING THAT THE BOARD OF REALTY REGULATION LICENSE ENCUMBRANCE BROKERS; REVISING THE OPEN-SPACE LAND AND VOLUNTARY CONSERVATION EASEMENT ACT; REVISING THE POLICY AND PURPOSE OF THE ACT; REVISING DEFINITIONS; REQUIRING THAT A QUALIFIED PRIVATE ORGANIZATION THAT ACQUIRES A CONSERVATION EASEMENT BE A LICENSED ENCUMBRANCE BROKER; PROHIBITING TRANSFER OF A CONSERVATION EASEMENT FOR 2 YEARS; PROHIBITING TRANSFER OF A CONSERVATION EASEMENT WITHOUT THE APPROVAL OF THE OWNER OF THE LAND SUBJECT TO THE EASEMENT; LIMITING THE AUTHORITY OF A PUBLIC BODY TO ACCEPT ASSISTANCE FROM THE FEDERAL GOVERNMENT; REVISING THE TYPES OF PERMISSIBLE CONSERVATION EASEMENTS AND PROHIBITING EASEMENTS THAT PREVENT NATURAL RESOURCE USE; REQUIRING APPROVAL BY THE GOVERNING BODY, MORTGAGE HOLDER, AND LIENHOLDER BEFORE A CONSERVATION EASEMENT OR DEED RESTRICTION THAT IS EQUIVALENT TO A CONSERVATION EASEMENT MAY BE RECORDED; AND AMENDING SECTIONS 7-4-2613, 37-51-102, 76-6-102, 76-6-103, 76-6-104, 76-6-105, 76-6-106, 76-6-109, 76-6-203, 76-6-204, 76-6-206, AND 76-6-207, MCA."

WHEREAS, traditional uses of the land and natural resources of Montana are critical to the economic vitality of Montana and the heritage of its citizens; and

WHEREAS, future generations of Montanans will need to use natural resources for their subsistence, specifically resources for growth and harvesting of food and fiber, ore extraction, fuel extraction, and production; and

WHEREAS, the Legislature did not intend to allow conservation easements to prevent Montanans or future generations of Montanans from the use of natural resources on their own property; and

WHEREAS, it is appropriate and in the public interest to ensure that conservation easements or similar deed restrictions protect the use of natural resources into the future; and

WHEREAS, conservation easements and other restrictions on the use of real property can harm the

1 economic vitality of Montana and conflict with the character and heritage of its citizens; and

2 WHEREAS, it is in the interest of the State of Montana to prohibit further conservation easements or
3 deed restrictions that prevent the use of natural resources.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6
7 **Section 1.** Section 7-4-2613, MCA, is amended to read:

8 **"7-4-2613. Documents subject to recording.** (1) The county clerk shall, upon the payment of the
9 appropriate fees, record by printing, typewriting, photographic, micrographic, or electronic process or by the use
10 of prepared blank forms:

11 (a) (i) subject to ~~subsection~~ subsections (1)(a)(ii) and (1)(a)(iii), deeds, grants, transfers, certified copies
12 of final judgments or decrees partitioning or affecting the title or possession of real property any part of which
13 is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of
14 mortgages, reconveyances by trustees of deeds of trust, assignments of mortgages and deeds of trust, powers
15 of attorney to convey real estate, leases that have been acknowledged or proved, and abstracts of the
16 instruments that have been acknowledged or proved;

17 (ii) an instrument or deed evidencing either a division of real property or a merger of real property only
18 if the instrument or deed is accompanied by a certification from the county treasurer that taxes and special
19 assessments that have been assessed and levied have been paid;

20 (iii) a conservation easement or a deed subject to a restriction that is equivalent to a conservation
21 easement, as defined in 76-6-104, only if the conservation easement has been approved by the governing body
22 for the jurisdiction in which it is located pursuant to [section 14] and any mortgage holder or lienholder;

23 (b) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule
24 relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of
25 buyer's interest. However, if the instrument of conveyance underlying a notice of buyer's interest would be
26 unrecordable, the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is
27 unrecordable and may be void.

28 (c) an acknowledged statement indicating that the holder of a nonprobate interest in real property is
29 deceased. A nonprobate interest in real property is a joint tenancy interest or a life estate interest. The
30 acknowledged statement must contain:

- 1 (i) a statement that the holder of the nonprobate interest has died and that the holder's interest in the
2 property is terminated; and
- 3 (ii) a legal description of the property.
- 4 (d) certificates of births and deaths;
- 5 (e) wills devising real estate admitted to probate;
- 6 (f) official bonds;
- 7 (g) transcripts of judgments that by law are made liens upon real estate;
- 8 (h) instruments describing or relating to the individual property of married persons;
- 9 (i) all orders and decrees made by the district court in probate matters affecting real estate and that are
10 required to be recorded;
- 11 (j) notice of preemption claims;
- 12 (k) notice and declaration of water rights;
- 13 (l) assignments for the benefit of creditors;
- 14 (m) affidavits of annual work done on mining claims;
- 15 (n) notices of mining locations and declaratory statements;
- 16 (o) estrays and lost property;
- 17 (p) a book containing appraisal of state lands; and
- 18 (q) other writings that are required or permitted by law to be recorded.

19 (2) Any instrument that qualifies for recording under this section may incorporate by reference any
20 provision, statement, description, or other language or material that is contained in another properly recorded
21 instrument and that is recorded in the same county as the instrument that is incorporating the language or
22 material by reference is to be recorded."

23

24 **Section 2.** Section 37-51-102, MCA, is amended to read:

25 **"37-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
26 apply:

27 (1) "Account" means the real estate recovery account established in 37-51-501.

28 (2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as
29 being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property
30 and may be a fact that:

1 (i) materially affects the value, affects structural integrity, or presents a documented health risk to
2 occupants of the property; or

3 (ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or
4 existing contract.

5 (b) The term does not include the fact that an occupant of the property has or has had a communicable
6 disease or that the property was the site of a suicide or felony.

7 (3) "Board" means the board of realty regulation provided for in 2-15-1757.

8 (4) "Broker" includes an individual who:

9 (a) for another or for valuable consideration or who with the intent or expectation of receiving valuable
10 consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real
11 estate or of the improvements on real estate or collects rents or attempts to collect rents;

12 (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing,
13 subleasing, or other disposition of real estate for consideration;

14 (c) engages in the business of charging an advance fee or contracting for collection of a fee in
15 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other
16 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for
17 referral of information concerning real estate to brokers;

18 (d) makes the advertising, sale, lease, or other real estate information available by public display to
19 potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real
20 estate for purchase or lease;

21 (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for
22 purchase or lease;

23 (f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson
24 the name of a prospective buyer or seller of real property; or

25 (g) advertises or represents to the public that the individual is engaged in any of the activities referred
26 to in subsections (4)(a) through (4)(f).

27 (5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who
28 has entered into an agreement to acquire an interest in real property. The term includes tenants or potential
29 tenants with respect to leases or rental agreements of real property.

30 (6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement,

1 is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house
2 buyer agent designate.

3 (7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a
4 broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

5 (8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts
6 as the agent of a buyer.

7 (9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part
8 17.

9 (10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer
10 broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written
11 authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a
12 dual agent.

13 (11) "Encumbrance broker" means an organization that solicits, facilitates, acquires, purchases, or
14 attempts to solicit, facilitate, acquire, or purchase a conservation easement, as defined in 76-6-104.

15 ~~(11)~~(12) "Franchise agreement" means a contract or agreement by which:

16 (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in
17 substantial part by the franchisor;

18 (b) the operation of the franchisee's business is substantially associated with the franchisor's trademark,
19 trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

20 (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the
21 agreement.

22 ~~(12)~~(13) "In-house buyer agent designate" means a broker or salesperson employed by or associated
23 as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for
24 a designated transaction and who may not be considered to be acting for other than the buyer with respect to
25 the designated transaction.

26 ~~(13)~~(14) "In-house seller agent designate" means a broker or salesperson employed by or associated
27 as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for
28 a designated transaction and who may not be considered to be acting for other than the seller with respect to
29 the designated transaction.

30 ~~(14)~~(15) "Listing agreement" means a written agreement between a seller and broker for the sale of real

1 estate, with the terms and conditions set out in the agreement.

2 ~~(15)~~(16) "Negotiations" means:

3 (a) efforts to act as an intermediary between parties to a real estate transaction;

4 (b) facilitating and participating in contract discussions;

5 (c) completing forms for offers, counteroffers, addendums, and other writings; and

6 (d) presenting offers and counteroffers.

7 ~~(16)~~(17) "Person" includes individuals, partnerships, associations, and corporations, foreign and
8 domestic, except that when referring to a person licensed under this chapter, it means an individual.

9 ~~(17)~~(18) "Property manager" includes a person who for a salary, commission, or compensation of any
10 kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate
11 belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

12 ~~(18)~~(19) "Real estate" includes leaseholds as well as any other interest or estate in land, whether
13 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

14 ~~(19)~~(20) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,
15 exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,
16 negotiation, and contract development and closing.

17 ~~(20)~~(21) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind
18 is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or
19 negotiate for the sale, purchase, exchange, or renting of real estate.

20 ~~(21)~~(22) "Seller" means a person who has entered into a listing agreement to sell real estate and
21 includes landlords who have an interest in or are a party to a lease or rental agreement.

22 ~~(22)~~(23) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts
23 as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

24 ~~(23)~~(24) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts
25 as the agent of a seller.

26 ~~(24)~~(25) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real
27 estate transaction without acting as an agent or representative of any party to the real estate transaction.

28 (b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or
29 salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has
30 disclosed, as required in this chapter, a relationship other than that of a statutory broker."

1

2 **NEW SECTION.** **Section 3. Licensing of encumbrance broker.** The board shall adopt rules
3 governing licensing of encumbrance brokers. The rules must:

4 (1) require fees for licensing, limited to an amount necessary to pay for administration and enforcement
5 of the encumbrance licensing requirements;

6 (2) include requirements necessary to ensure that an encumbrance broker has sufficient knowledge
7 to solicit, facilitate, or attempt to facilitate a conservation easement or a deed restriction that is equivalent to a
8 conservation easement, as defined in 76-6-104, in compliance with the requirements of Title 76, chapter 6; and

9 (3) provide for the revocation of the license if the encumbrance broker violates the law.

10

11 **Section 4.** Section 76-6-102, MCA, is amended to read:

12 **"76-6-102. Findings and policy.** The legislature finds that:

13 (1) the rapid growth and spread of urban development are creating critical problems of service and
14 finance for the state and local governments;

15 (2) the present and future rapid population growth in urban areas is creating severe problems of urban
16 and suburban living;

17 (3) this population spread and its attendant development are disrupting and altering the ~~remaining~~
18 ~~natural areas, biotic communities, and geological and geographical formations and thereby providing the~~
19 ~~potential for the destruction of scientific, educational, aesthetic, and ecological values~~ use of natural resources
20 and the heritage of Montana citizens;

21 (4) the present and future rapid population spread throughout the state of Montana into its open spaces
22 is creating serious problems of lack of open space and overcrowding of the land;

23 (5) ~~to lessen congestion and to preserve natural, ecological, geographical, and geological elements;~~
24 the provision and preservation of open-space lands are necessary to secure park, recreational, historic, and
25 scenic areas, ~~and to conserve the land, its biotic and the human communities that live on the land, its natural~~
26 ~~resources, and its geological and geographical elements in their natural state~~ and to lessen congestion;

27 (6) the acquisition or designation of interests and rights in real property by certain ~~qualifying~~ qualified
28 private organizations and by public bodies to provide or preserve open-space land is essential to the solution
29 of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state;

30 (7) the exercise of authority to acquire or designate interests and rights in real property to provide or

1 preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose;
2 and

3 (8) the statutory provision enabling certain ~~qualifying~~ qualified private organizations to acquire interests
4 and rights in real property to provide or preserve open-space land is in the public interest."
5

6 **Section 5.** Section 76-6-103, MCA, is amended to read:

7 **"76-6-103. Purposes.** In accordance with the findings in 76-6-102, the legislature states that the
8 purposes of this chapter are to:

9 (1) authorize and enable public bodies and certain ~~qualifying~~ qualified private organizations voluntarily
10 to ~~provide for the preservation of native plants or animals, biotic communities, or geological or geographical~~
11 ~~formations of scientific, aesthetic, or educational interest;~~

12 ~~———(2) provide for the preservation of other significant open-space land anywhere in the state, either in~~
13 ~~perpetuity or for a term of years; and~~

14 ~~(3)(2) encourage private participation in such a program by establishing the policy to be utilized~~ used
15 ~~in determining the property tax to be levied upon the real property which that is subject to the provisions of this~~
16 ~~chapter."~~
17

18 **Section 6.** Section 76-6-104, MCA, is amended to read:

19 **"76-6-104. Definitions.** The following terms whenever used or referred to in this chapter ~~shall~~ have the
20 following meanings unless a different meaning is clearly indicated by the context:

21 (1) "Comprehensive planning" means planning for development and ~~shall include~~ includes:

22 (a) preparation of general physical plans with respect to the pattern and intensity of land use and the
23 provision of public facilities, including transportation facilities, together with long-range fiscal plans for ~~such~~
24 development as a guide for long-range development;

25 (b) programming and financing plans for capital improvements;

26 (c) coordination of all related plans and planned activities at both the intragovernmental and
27 intergovernmental levels; and

28 (d) preparation of regulatory and administrative measures in support of ~~the foregoing~~ subsections (1)(a)
29 through (1)(c).

30 (2) "Conservation easement" means an easement or restriction, running with the land and assignable,

~~whereby~~ through which an owner of land voluntarily relinquishes to the holder of ~~such the~~ the easement or restriction any ~~or all~~ rights to construct or permit the construction of improvements upon the land or to ~~substantially~~ alter or permit the alteration of the natural character of the land ~~or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land~~, except as this right is expressly reserved in the instruments evidencing the easement or restriction.

(3) "Natural resource use" means use of the land for the purpose of activities that have the potential to provide an economic benefit, including but not limited to ranching, grazing, farming, harvesting of timber, mining, or producing oil or gas.

~~(3)(4)~~ (4) "Open-space land" means any land which that is provided or preserved for:

(a) park or recreational purposes;

(b) conservation of land or other natural resources;

(c) historic or scenic purposes; or

(d) assisting in the shaping of the character, direction, and timing of community development.

~~(4)(5)~~ (5) "Public body" means the state, counties, cities, towns, and other municipalities.

~~(5)(6)~~ (6) "Qualified private organization" means a private organization:

(a) competent to own interests in real property;

(b) ~~which that~~ qualifies and holds a general tax exemption under the federal Internal Revenue Code, section 501(c); and

(c) whose organizational purposes are designed to further the purposes of this chapter; and

(d) that is an encumbrance broker licensed under [section 3].

~~(6)(7)~~ (7) "Urban area" means any area which that is urban in character, including surrounding areas ~~which that~~ form an economic and socially related region, taking into consideration such factors such as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities."

Section 7. Section 76-6-105, MCA, is amended to read:

"76-6-105. Construction of chapter. (1) To the extent that the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter are controlling. The powers conferred by this chapter are in addition and supplemental to the powers conferred by any other law.

~~(2) This chapter may not be construed to imply that any easement, covenant, condition, or restriction~~

1 ~~that does not have the benefit of this chapter is not enforceable based on any provisions of this chapter. This~~
2 ~~chapter does not diminish the powers granted by any general or special law to acquire by purchase, gift, eminent~~
3 ~~domain pursuant to Title 70, chapter 30, or otherwise and to use land for public purposes."~~

4
5 **Section 8.** Section 76-6-106, MCA, is amended to read:

6 **"76-6-106. Acquisition and designation of real property by public body.** To carry out the purposes
7 of this chapter, any public body may:

8 (1) acquire by purchase, gift, devise, bequest, or grant title to or any interests or rights in real property,
9 including land and water, that will provide a means for the preservation or provision of significant open-space
10 land ~~or the preservation of native plants or animals, biotic communities, or geological or geographical formations~~
11 ~~of scientific, aesthetic, or educational interest, or both; or~~

12 (2) designate any real property, including land and water, in which it has an interest to be retained and
13 used for the preservation and provision of significant open-space land ~~or the preservation of native plants or~~
14 ~~animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational~~
15 ~~interests, or both.~~

16 (3) A public body that acquires a conservation easement may not transfer the conservation easement
17 to another party for 2 years. The transfer of the conservation easement must be approved by the owner of the
18 land subject to the easement."

19
20 **Section 9.** Section 76-6-109, MCA, is amended to read:

21 **"76-6-109. Powers of public bodies.** (1) A public body has the power to carry out the purposes and
22 provisions of this chapter, including the following powers in addition to others granted by this chapter:

23 (a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

24 (b) to advance or accept advances of public funds;

25 (c) to apply for and accept and use grants and any other ~~assistance from the federal government and~~
26 ~~any other nonfederal~~ public or private sources, to give security as may be required, and to enter into and carry
27 out contracts or agreements in connection with the assistance, ~~and to include in any contract for assistance from~~
28 ~~the federal government conditions imposed pursuant to federal laws as the public body may consider reasonable~~
29 ~~and appropriate and that are not inconsistent with the purposes of this chapter;~~

30 (d) to make and execute contracts and other instruments necessary or convenient to the exercise of

its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities that may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state or a city, town, other municipality, or county may:

(a) appropriate funds;

(b) subject to 15-10-420, levy taxes and assessments according to existing codes and statutes;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state, subject to subsection (3); and

(d) exercise its powers under this chapter through a board or commission or through the office or officers that its governing body by resolution determines or as the governor determines in the case of the state.

(3) Property taxes levied to pay the principal and interest on general obligation bonds issued by a city, town, other municipality, or county pursuant to this chapter may not be levied against the following property:

(a) agricultural land eligible for valuation, assessment, and taxation as agricultural land under 15-7-202;

(b) forest land as defined in 15-44-102;

(c) all agricultural improvements on agricultural land referred to in subsection (3)(a);

(d) all noncommercial improvements on forest land referred to in subsection (3)(b);

(e) agricultural implements and equipment described in 15-6-138(1)(a); and

(f) livestock described in 15-6-136(1)(a)."

Section 10. Section 76-6-203, MCA, is amended to read:

1 **"76-6-203. Types of permissible easements. Easements** (1) Subject to subsection (2), easements
2 or restrictions under this chapter may ~~prohibit or~~ limit any ~~or all~~ of the following:

3 ~~(1)(a) structures--construction or placing~~ placement of buildings, camping trailers, housetrailer, mobile
4 homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

5 ~~(2)(b) landfill--dumping or placing of soil, or other substance or material as landfill or dumping or placing~~
6 ~~of~~ trash, waste, or unsightly or offensive materials;

7 ~~(3)(c) vegetation--removal or destruction of trees, shrubs, or other vegetation;~~

8 ~~(4)(d) loam, gravel, etc.--excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other~~
9 material substance;

10 ~~(5)(e) surface use--surface use except for such purposes permitting the land or water area to remain~~
11 ~~predominantly in its existing condition;~~

12 ~~(6)(f) acts detrimental to conservation--activities detrimental to drainage, flood control, water~~
13 conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation; and

14 ~~(7)(g) subdivision of land--subdivision of land, as defined in 76-3-103, 76-3-104, and 76-3-202;~~

15 ~~——(8) other acts--other acts or uses detrimental to such retention of land or water areas in their existing~~
16 conditions.

17 (2) A conservation easement may not prohibit natural resource use."
18

19 **Section 11.** Section 76-6-204, MCA, is amended to read:

20 **"76-6-204. Acquisition of conservation easements by qualified private organizations.** Any A
21 qualified private organization may acquire ~~by a conservation easement, by purchase, or by gift, devise, bequest,~~
22 ~~or grant title to any interest or interests in rights in real property, including land and water, that will provide a~~
23 ~~means for the preservation or provision of permanent significant open-space land and/or the preservation of~~
24 ~~native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or~~
25 ~~educational interest.~~ A qualified private organization that acquires a conservation easement may not transfer
26 the conservation easement to another party for 2 years. The transfer of the conservation easement must be
27 approved by the owner of the land subject to the easement."
28

29 **Section 12.** Section 76-6-206, MCA, is amended to read:

30 **"76-6-206. Review by local planning authority.** In order to minimize conflict with local comprehensive

1 planning, all conservation easements ~~shall be~~ are subject to review prior to recording by the appropriate local
2 planning authority for the county within which the land lies. ~~It shall be the responsibility of the entity acquiring the~~
3 ~~conservation easement to present the proposed conveyance of the conservation easement to the appropriate~~
4 ~~local planning authority.~~ The local planning authority ~~shall have~~ has 90 days from receipt of the ~~proposed~~
5 ~~conveyance within which~~ application and fee by the governing body to review and to comment upon the
6 relationship of the proposed conveyance to comprehensive planning for the area. ~~Such~~ The comments ~~will not~~
7 ~~be~~ are not binding on the proposed grantor or grantee ~~but shall be merely~~ and are advisory in nature. The
8 ~~proposed conveyance may be recorded after comments have been received from the local planning authority~~
9 ~~or the local planning authority has indicated in writing it will have no comments or 90 days have elapsed,~~
10 ~~whichever occurs first."~~

11
12 **Section 13.** Section 76-6-207, MCA, is amended to read:

13 **"76-6-207. Recording and description of easement.** (1) ~~All~~ After approval by the governing body
14 pursuant to [section 14], conservation easements ~~shall~~ must be ~~duly~~ recorded in the county where the land lies
15 so as to effect their titles in the manner of other conveyances of interest in land ~~and shall.~~ Conservation
16 easements must describe the land subject to ~~said the~~ conservation easement by adequate legal description or
17 by reference to a recorded plat showing its boundaries.

18 (2) The county clerk and recorder shall upon recording ~~cause~~ place a copy of the conservation
19 easement ~~to be placed~~ in a separate file within the office of the county clerk and recorder and shall ~~cause~~ mail
20 a copy of the conservation easement ~~to be mailed~~ to the department of revenue."

21
22 **NEW SECTION. Section 14. Approval of conservation easements and deed restrictions --**
23 **procedure -- fee -- appeal.** (1) All conservation easements must be approved by the governing body of the
24 municipality or county in which the easement is located, as provided in this section.

25 (2) A person, qualified private organization, or public body shall submit an application for approval of
26 a conservation easement to the governing body. The governing body shall provide a copy of the application to
27 the appropriate local planning authority for review under 76-6-206.

28 (3) An application for approval of a conservation easement must include:

29 (a) a description of the land subject to the conservation easement, as provided in 76-6-207;

30 (b) a description of the history of the use of the property proposed to be subject to the easement;

1 (c) the names of prior owners of the property proposed to be subject to the easement;

2 (d) the name and address of the owner of the property proposed to be subject to the easement;

3 (e) the name and address of each owner of a parcel of land that is adjacent to the property that is
4 proposed to be subject to the easement;

5 (f) the name and address of the qualified private organization or public body that proposes to acquire
6 a conservation easement; and

7 (g) if applicable, verification that an organization is a qualified private organization.

8 (4) The governing body may charge a reasonable fee to cover the costs of reviewing the conservation
9 easement and conducting a public hearing.

10 (5) Subject to subsection (7), the governing body may approve the application after:

11 (a) the local planning authority has commented on the proposed conservation easement; or

12 (b) 90 days after receipt of the application.

13 (6) The governing body may approve the conservation easement only if it complies with the law.

14 (7) An aggrieved party may appeal the decision of the governing body to the district court.

15
16 **NEW SECTION. Section 15. Codification instruction.** (1) [Section 3] is intended to be codified as
17 an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part 3, apply to [section
18 3].

19 (2) [Section 14] is intended to be codified as an integral part of Title 76, chapter 6, part 2, and the
20 provisions of Title 76, chapter 6, part 2, apply to [section 14].

21
22 **NEW SECTION. Section 16. Severability.** If a part of [this act] is invalid, all valid parts that are
23 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
24 the part remains in effect in all valid applications that are severable from the invalid applications.

25 - END -